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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,351	03/31/2004	Krishnasamy Anandakumar	TI-28906.1	8819
23494 7590 12/01/2008 TEXAS INSTRUMENTS INCORPORATED P O BOX 655474, M/S 3999 DALLAS, TX 75265				
EXAMINER				
MOORE JR, MICHAEL J				
ART UNIT		PAPER NUMBER		
2419				
NOTIFICATION DATE		DELIVERY MODE		
12/01/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@ti.com

Office Action Summary

Application No.

10/816,351

Applicant(s)

ANANDAKUMAR ET AL.

Examiner

MICHAEL J. MOORE, JR.

Art Unit

2419

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 281-294 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 281-294 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/11/08 has been entered.

Terminal Disclaimer

2. The terminal disclaimer filed on 9/11/08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of *U.S. 6,757,256* has been reviewed and is accepted. The terminal disclaimer has been recorded.
3. The terminal disclaimer filed on 9/11/08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of *copending U.S. application no. 10/885911* has been reviewed and is accepted. The terminal disclaimer has been recorded.
4. The terminal disclaimer filed on 9/11/08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of *copending U.S. application no. 10/815044* has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Amendment

The submission by Applicant of the above terminal disclaimers is sufficient to overcome the obviousness-type double patenting rejections presented in the previous Office Action. However, upon further review, a further obviousness-type double patenting rejection has been made as provided below.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,804,244 in view of Hörlin (U.S. 6,212,162).

Regarding claim 1, "a process of sending packets of voice information" corresponds to "sending packets of real-time information from the integrated circuit" in claim 1 of the above U.S. Patent.

"Initially generating at a sender the packets of voice information, the packets of voice information including source packets with an initial source rate greater than zero kilobits per second, and diversity packets with an initial diversity rate, the initial diversity rate being at least zero kilobits per second" corresponds to "initially generating at the integrated circuit the packets of real-time information with a source data rate greater than zero kilobits per second, and a diversity rate, the diversity data rate initially being at least zero kilobits per second" in claim 1 of the above '244 U.S. Patent.

"Sending the packets, thereby resulting in a quality of service QoS" corresponds to the same in claim 1 of the above '244 U.S. Patent.

"Comparing the QoS with a threshold of acceptability" corresponds to the same in claim 1 of the above '244 U.S. Patent.

"When the QoS is on an unacceptable side of the threshold, increasing the diversity rate" corresponds to the same in claim 1 of the above '244 U.S. Patent.

The limitation "when the QoS returns to an acceptable side of the threshold, increasing the source rate" is not taught by claim 1 of the above '244 U.S. Patent.

However, *Hörlin* teaches a method for packet flow control, where for an incoming packet signal, when a proportion of guaranteed resources (QoS) is determined to exceed a given threshold value, the packet sending rate of the sources can be increased as a result of this as spoken of on column 8, lines 52-60.

At the time of the invention, it would have been obvious to someone of ordinary skill in the art, to apply the packet flow control teachings of *Hörlin* to the teachings of

claim **1** of the above U.S. Patent 6,804,244, in order to regulate the flow of data in accordance with the QoS as spoken of on column 9, lines 52-60 of *Hörlin*.

Regarding claims **281-294**, the limitations of these claims similarly correspond to claims **2-6** of the above '244 U.S. Patent and are correspondingly rejected.

Allowable Subject Matter

7. Claims **1 and 281-294** are allowable over the prior art of record.
8. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claims **1 and 281-294**, these claims are allowable for the reasons indicated in the previous Office Action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. MOORE, JR., whose telephone number is (571)272-3168. The examiner can normally be reached on Monday-Friday (7:30am - 4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jayanti K. Patel can be reached at (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J. Moore, Jr./
Examiner, Art Unit 2419